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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THE 25TH DAY OF MAY 1998

BEFORE:

THE HON' BLE MR. JUSTICE H. RANGAVITTALACHAR

H. R. R. P. NO. 989/1993

Smt. Ammayamma,
w/o late Puttappa,
62 years, No. 60,
II Cross, New Guddadahalli,
Mysore Road, Bangalore-26.

Petitioner

(By Sri S.P. Shankar)

-vs-

Ramaiah since deceased by L. Rs.

a) Puttanamma,
w/o Ramaiah, major.

b) Manju, s/o Ramaiah,
major.

Both are r/o No. 60,
II Cross, New Guddadahalli,
Mysore Road, Bangalore-26.

Respondents

(By Sri G.B. Raju)

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This revision petition is filed under Section 50 (1) of the Karnataka Rent Control Act, against the order dated 17.6.1993 passed in HRC No. 1936/90 on the file of the XIX Additional Small Causes Judge, Bangalore.

This revision petition coming on for hearing this day, the court made the following:

ORDER

Aggrieved by the order dismissing the eviction petition the landlady has preferred this petition under Section 50 of the Karnataka Rent Control Act.

Petitioner had filed an eviction petition against the respondent herein in respect of a room abutting her residence on the ground that she is a widow, unfortunately her two daughters are also widows having children, hence they also have to be accommodated along with her. The present premises in her occupation consists of one room, kitchen and bathroom which is wholly inadequate for their residence. The petition schedule premises is highly suitable and therefore the same is required reasonably and bonafide for her own use and occupation. This petition was resisted by the tenant-respondent contending that the requirement is neither reasonable nor bonafide. On the basis of these pleadings the parties went to trial and adduced evidence. The learned Judge of the Small Causes in appreciation of the evidence rejected the petition solely on the ground that during the pendency of the eviction petition one room fell vacant and instead of occupying the same the landlady had leased it out to a third party which fact clearly takes away the bonafides. Aggrieved

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by the said order this revision petition is filed.

Sri S.P.Shankar, learned counsel appearing for the petitioner submitted that the learned Judge has fallen into an error of record in omitting to consider that what had fallen vacant was an auto shed situate opposite to the residence of the petitioner and the petitioner being a widow with her two widowed daughters cannot occupy the said premises. The learned Judge according to him having ~~dis~~believed the case of the petitioner that the accommodation at present in her occupation has only one room and the number of persons to be accommodated is about 5 should have held that the scheduled premises which abuts the petition schedule premises is more suitable for their additional accommodation. He therefore submitted that the order is liable to be set aside.

Per contra Sri G.B.Raju, learned counsel appearing for the respondent submitted that the findings of the learned Munsiff that in the absence of the petitioner showing any reason for his non-occupation of a room which fell vacant, the learned Judge was justified in rejecting the petition.

I have gone through the order of the learned Judge of Small Causes. The learned Judge as rightly

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contended by the petitioner has not dis-believed the case of the petitioner that there are large number of persons to be accommodated in a small single bed room premises. All that the learned Judge finds fault is petitioner has failed to occupy one of the rooms that fell vacant during the pendency of the petitioner. It has to be stated that admittedly the room that fell vacant was situated in the opposite side of the schedule premises.

The family of the petitioner are all widowed female members without any male assistance ^{under circumstances it} which cannot be said by any stretch of imagination that a ^{author} shed falling vacant in the opposite side can be held to be suitable or convenient and non-occupation of such a premises would take away the bonafides. If the petitioner had leased out any premises adjacent to the schedule premises that may be a ground to consider the bonafides of the petitioner. That is not the case here. Therefore the reasoning of the learned Judge cannot be upheld. As I have already observed that the evidence on record discloses that the petitioner has a large family, admittedly in occupation of a single bed room tenement and such a family aspiring for more accommodation cannot be ^{held} held to be either as unreasonable or malafide. Therefore it has to be held that the petitioner requires the premises reasonably and bonafide

for her own use and occupation.

In so far as the question of comparative hardship is concerned if eviction order is rejected it would virtually amount the large family of the petitioner to huddle in a single room for all times to come, whereas the respondent-tenant with some difficulty can secure an alternative premises. Therefore the petitioner suffer greater hardship than the respondent.

Having regard to the fact that the schedule premises ^{is a Room} is required for additional accommodation partial eviction is not feasible in this case.

For the reasons stated above, this petition is allowed. The order of the learned Judge is set aside. Having regard to the fact that the legal representatives of the original tenant is a widow having a minor son and the submission made at the Bar that the tenant is a maid servant and the difficulty in obtaining a suitable alternative premises, time is granted till 31.12.2001 to vacate the premises.

Petition allowed.

Sd/-
JUDGE